

2024:PHHC:150279



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-4683-2018 (O&M)

Reserved on : 12.11.2024

Pronounced on : 19.11.2024

HARI RAM AND ANOTHER

....Appellants

VERSUS

SITA RAM AND ANOTHER

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Anjali, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants against the judgements and decrees dated 17.02.2016 and 16.04.2018 passed by the Trial Court and the First Appellate Court dismissing their suit for mandatory injunction and permanent injunction.

2. The suit was filed by the plaintiff-appellants averring that the defendant-respondent No.1 had encroached upon a public rasta and chowk and constructed a Chabutra which created an obstruction for the inhabitants of the locality. The encroachment by the defendant-respondent No.1 was liable to be demolished and he be restrained from raising any construction. The defendant-respondent No.1 in his written statement denied that he was encroaching upon any land of the defendant-respondent No.2. It was the stand taken that the defendant-respondent No.1 was raising construction on his own property. His grand-father Matadin had constructed the Chabutra after passing of Resolution No.128 dated 12.06.1971 by the Municipal

Committee and he was raising construction only on the same portion. There was no illegal encroachment on the property of defendant-respondent No.2 and defendant-respondent No.1 was only repairing the Chabutra and not raising any fresh construction.

3. From the pleadings of the parties following issues were framed :

1. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for by him in the plaint ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the present suit is not maintainable ? OPD
4. Whether the suit of the plaintiff is time barred ? OPD
5. Relief.

4. Vide judgement and decree dated 17.02.2016 the Trial Court dismissed the suit of the plaintiff-appellants. The appeal of the plaintiff-appellants was also dismissed by the First Appellate Court vide judgement and decree dated 16.04.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit. It is urged that it is amply proven that the defendant-respondent No.1 is raising construction on public property on which he had no right and therefore the suit ought to have been decreed.

6. Heard counsel for the plaintiff-appellants.

7. In the present case the plaintiff-appellant has been unable to prove that the construction raised by the defendant-respondent No.1 was on land belonging to the defendant-respondent No.2. The extent of the alleged illegal construction was also not proved. The First Appellate Court found that *“Perusal of the report Ex.P1 of local commissioner shows that defendant no.1 is raising new Chabutra adjacent to old Chabutra. It is also mentioned in it that on 2.7.2011 defendant had only constructed it with bricks. On 6.7.2011 defendant has constructed a floor on the property of Municipal Committee. But plaintiff has failed to prove that on how much area defendant has illegally made the encroachment on the property of defendant no.2. If there is no mention about the area encroached, then how much area will be demolished. Further, in the said report Ex.P1 there is no dimension or measurement regarding the chabutra constructed by the defendant no.1. He has also not submitted the earlier portion and new portion at the spot. There is no demarcation report on the file, which could prove that the on how much portion the defendant no.1 has encroached. Further more, the report of local commissioner is not a conclusive proof of the fact. It is only supportive evidence, if case otherwise fully proved by oral as well as documentary evidence”*. Even before this Court the learned counsel for the plaintiff-appellants has not highlighted any evidence on the record which would prove the extent of the alleged encroachment or any demarcation report. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.11.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*